possession of all the facts of the case.[7] The lay witness is permitted to give his opinion in regard to handwriting, insanity, identity, value, and the like, since it is based on facts of personal knowledge which cannot be completely detailed to the jury.[8] Expert opinion, on the other hand, is admitted not because of a difficulty in presenting graphically the observed facts, but because the technical significance of the facts presented cannot be grasped by the jury.[9] Thus, where the jury as men of common knowledge cannot intelligently determine the exact cause of death from the symptoms and pathological conditions testified to, the opinion of the physician that deceased died of phosphorus poisoning is evidence of the correct conclusion to be drawn from these symptoms and conditions.[10] An opinion rule, in the last analysis, appears to be nothing more than a rule of administration, necessarily demanding the use of considerable judicial discretion, directed to the admission of only the best available evidence needed by the jury in order to come to a just and correct decision.[11]

The Supreme Court in *Northern California Power Company v. Walker*[12] shows a proper understanding of the function of non-expert opinion in its holding that it was error to allow the opinion of ordinary witnesses as to the carrying capacity of two ditches, where better evidence, in the nature of physical facts and conditions, was available. In rendering this decision, the court announces an excellent rule to govern the admission of opinion evidence. This rule is that, whenever possible, data to establish a given condition or fact must be introduced in evidence, and if scientific knowledge be necessary to formulate these data into the statement of the ultimate fact to be arrived at, this may be done by the opinion of experts; but when it is not possible to present these data to the court, the opinions of ordinary witnesses become admissible as the best available evidence.

F. H. M.

LANDLORD AND TENANT: EFFECT OF PROHIBITION LAWS UPON LEASES OF PREMISES FOR LIQUOR SELLING.—In view of the grow-

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[7] Miller v. State (1910), 94 Ark. 538, 128 S. W. 353; Holland v. Zollner (1894), 102 Cal. 633, 36 Pac. 930, 37 Pac. 231; Shafter Estate Co. v. Alvord (1906), 2 Cal. App. 602, 84 Pac. 279; Chamberlayne, Evidence (1912), §§ 1810, 1812, 1845; Wigmore, Evidence (1904), § 1924.

[8] San Diego Land Co. v. Neale (1888), 78 Cal. 63, 20 Pac. 372, 3 L. R. A. 83; People v. Manoogian (1904), 141 Cal. 592, 75 Pac. 177; People v. Gray (1906), 148 Cal. 507, 83 Pac. 707; People v. Gordon (1910), 13 Cal. App. 678, 110 Pac. 469; Cal. Code Civ. Proc., § 1870 subd. 9, 10; Jones, Evidence (3d ed.), § 360.

[9] Parkin v. Grayson-Owen Co. (1909), 157 Cal. 41, 106 Pac. 210; Sillix v. Armour (Kan. 1916), 160 Pac. 1021; Chamberlayne, Evidence (1912), §§ 1811, 1845, 1955, 2377; Wigmore, Evidence (1904), § 1923.

[10] People v. Bowers (1888), 2 Cal. Unrep. Cas. 878, 18 Pac. 660.

[11] Baxter v. Chico Const. Co. (Sept. 20, 1916), 23 Cal. App. Dec. 439, 160 Pac. 1084; Scheck v. Barrett Nephews & Co. (1917), 162 N. Y. Supp. 417; Weiss v. Kohlhagen (1911), 58 Ore. 144, 113 Pac. 46; Wigmore, Evidence (1904), § 1929.

[12] (Feb. 7, 1917), 53 Cal. Dec. 192, 163 Pac. 214.

ing strength of the prohibition forces in California and elsewhere, it is interesting to notice what the courts of other jurisdictions have held with respect to the effect of subsequent prohibition laws upon the leases of premises for originally lawful saloon purposes. The word "saloon" as used in contracts and leases has now become synonymous with "barroom," "grogshop," or "dramshop,"[1] although its use does not necessarily import a place where intoxicating liquors alone are sold.[2]

It is a well recognized rule of contracts that where the performance of an executory contract which was lawful in its inception is made unlawful by subsequent enactment, the agreement is thereby dissolved.[3] This principle, however, has not been applied in cases for leases of saloons, except in two or three jurisdictions. The general rule appears to be that where there is a lease, wholly or in part, for saloon purposes, the lease is not terminated by the enactment of prohibition laws, or the refusal to issue a new license.[4] Nor is the tenant entitled to any abatement in rent because of the reduced value of the premises.[5] The reason given for the non-discharge of the tenant is usually that it is a matter of common knowledge that the liquor business may be terminated by operation of law, or by application of existing law, at any moment, and, consequently, that it is the duty of the lessee to have inserted in the lease a clause which will protect him should his business become prohibited by law during the term.[6] Emphasis is also placed upon the fact that some other use may still be made of the premises.

"Bone-dry" prohibition in the state of Washington has given rise to two very interesting cases in that state. In *The Stratford, Inc. v. Seattle Brewing and Malting Company,*[7] and its companion

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[1] 7 Words & Phrases, p. 6312.

[2] Kitson v. Ann Arbor (1873), 26 Mich. 325; State v. Mansker (1871), 36 Tex. 364; Goozen v. Phillips (1882), 49 Mich. 7, 12 N. W. 889.

[3] Ashley, Contracts, § 96; Wald's Pollock on Contracts (Williston's ed.), p. 514.

[4] O'Byrn v. Henley (1909), 161 Ala. 337, 50 So. 83; Burgett v. Loeb (1909), 43 Ind. App. 657, 88 N. E. 346; Baughman v. Portman (Ky., 1890), 14 S. W. 342; Abadie v. Berges (1889), 41 La. Ann. 281, 6 So. 529; Lawrence v. White (1909), 131 Ga. 840, 63 S. E. 631; Houston Ice & Brewing Co. v. Keenan (1905), 99 Tex. 79, 88 S. W. 197; San Antonio Brewing Ass'n v. Brents (1905), 39 Tex. Civ. App. 443, 88 S. W. 368; Hecht v. Acme Coal Co. (1911), 19 Wyo. 18, 113 Pac. 788, 117 Pac. 132; Goodrum Co. v. Potts-Thompson Liquor Co. (1910), 133 Ga. 776, 66 S. E. 1081; Shreveport Ice & Brewing Co. v. Mandel Bros. (1911), 128 La. 314, 54 So. 831.

[5] Baughman v. Portman, supra, n. 4; Teller v. Boyle (1890), 132 Pa. 56, 18 Atl. 1069; Fleming v. King (1897), 100 Ga. 449, 28 S. E. 239; Christian Moerlein Brewing Co. v. Roser (1916), 169 Ky. 198, 183 S. W. 479.

[6] Houston Ice & Brewing Co. v. Keenan, supra, n. 4; Abadie v. Berges, supra, n. 4; Miller v. Maguire (1895), 18 R. I. 770, 30 Atl. 966; Kerley v. Mayer (1895), 10 Misc. Rep. 718, 31 N. Y. Supp. 818; Hecht v. Acme Coal Co., supra, n. 4.

[7] (Wash., Dec. 29th, 1916), 162 Pac. 31.

case *Shepard v. Sullivan*,[8] the Supreme Court refused to follow the general rule, and placed itself unequivocally with the minority, which holds that the tenant is discharged from his obligations by the law, even though he may sell other commodities, such as "soft" drinks, cigars, and tobacco.[9] In justifying this decided stand against authority the court said that to continue the lease for other purposes, when it was the intention of the parties that it was for saloon use, would be "harsh and inequitable." The court further said: "regardless of authorities to the contrary we think justice and equity are with the respondent" (tenant).

Apart from the consideration of the opinions written in the principal cases refusing to follow authority, one's view of these must be regulated by his views as to the status of sellers of intoxicants. If the burdens and hazards of the business should be borne by the person who engages in it,[10] the principal cases are wrong. If on the other hand, the liquor dealer is regarded as an unfortunate who should be treated leniently after the destruction of his business, the Washington court is correct.

If Burke v. San Francisco Breweries[11] may be taken as indicative of the law in this state, California will follow the majority. In that case, merely the refusal to renew a license was before the court, but it denied relief to the tenant, and cited with approval many of the cases which form the majority rule.

J. C. N.

RESTRAINT OF TRADE: COMMON LAW: PATENTS.—When the Supreme Court of the United States frankly overrules a former decision the question is not free from difficulty. The button-fastener case started the trouble.[1] Mr. Justice Lurton, afterwards a Justice of the Supreme Court of the United States, there decided that a patentee licensing the use of a patent for fastening buttons on shoes might make a condition that the machine should be used only with certain unpatented staples manufactured by the patentee. A defendant, furnishing staples to be used with such licensed machines, was enjoined as an infringer. This decision was followed in numerous federal cases and received some apparent sanction from the United States Supreme Court in Bement v. National

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[8] (Wash., Dec. 29th, 1916), 162 Pac. 34.

[9] Heart v. East Tennessee Brewing Co. (1908), 121 Tenn. 69, 113 S. W. 364; Hickey v. Sciutto (1908), 24 Can. L. T. 106, 10 British Columbia 187; Greil Bros. Co. v. Mabson (1912), 179 Ala. 444, 60 So. 876 (Mr. Justice Holcomb also cites Kahn v. Wilheim (1915), 118 Ark. 239, 177 S. W. 403, but in that case there was a provision for avoidance of the lease in case of a prohibition law being passed).

[10] Supra, n. 6.

[11] (1913), 21 Cal. App. 198, 131 Pac. 83.

[1] Heaton-Peninsular Button-Fastener Co. v. Eureka Specialty Co. (1896), 77 Fed. 288.